

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905.

No. 1626.

CONRAD BRIEL, APPELLANT,

vs.

ALICE S. JORDAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

CONRAD BRIEL, Appellant, }
vs. } No. 1626.
ALICE S. JORDAN. }

a Supreme Court of the District of Columbia.

CONRAD BRIEL, Plaintiff, }
vs. } No. 45435. At Law.
ALICE S. JORDAN, Defendant. }

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration in Ejectment.*

Filed June 3, 1902.

In the Supreme Court of the District of Columbia.

CONRAD BRIEL, Plaintiff, }
vs. } No. 45435. At Law.
ALICE S. JORDAN, Defendant. }

The plaintiff sue the defendant to recover the premises known as lots numbered ten (10) and eleven (11) in C. H. Van Patten's subdivision of original lots in square numbered one hundred and forty four (144), situate, lying and being in the city of Washington District of Columbia in which said described premises plaintiff claims fee-simple title, and of which he was lawfully possessed, to wit, on the first day of May A. D. 1902, when the defendant entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said piece or parcel of ground, with the improvements thereon and the appurtenances thereof, and the costs of this suit.

And the plaintiff further sues the defendant for money payable by the defendant to the plaintiff for that the defendant having as aforesaid ejected the plaintiff from the aforesaid premises has, from the day and date aforesaid taken and received, and still continues to take and receive, the rents, issues and profits thereof, and to use, occupy and enjoy the said premises to the damage of the plaintiff one thousand dollars, which amount the plaintiff claims besides costs of this suit.

E. HILTON JACKSON,
Attorney for Plaintiff.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

E. HILTON JACKSON.
Attorney for Plaintiff.

Defendant's Plea.

Filed June 18, 1902.

In the Supreme Court of the District of Columbia.

CONRAD BRIEL	}	Law. No. 45435.
vs.		
ALICE S. JORDAN.		

Now comes the defendant and for plea to the plaintiff's declaration says, she is not guilty as alleged.

LEO SIMMONS,
Attorney for Defendant.

Joinder of Issue.

Filed June 23, 1902.

In the Supreme Court of the District of Columbia.

CONRAD BRIEL	}	At Law. No. 45435.
vs.		
ALICE S. JORDAN.		

The plaintiff joins issue upon the defendant's plea herein filed.

E. HILTON JACKSON,
Att'y for Plaintiff.

Memorandum.

1905, April 6.—Verdict for defendant.

Memorandum.

1905, April 11.—Motion for a new trial filed

4 *Motion for New Trial Overruled and Appeal.*

Supreme Court of the District of Columbia.

FRIDAY, May 5, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

CONRAD BRIEL, Pl'ff, }
 v. } At Law. No. 45435.
 ALICE JORDAN, Def't. }

Upon consideration of the motion of the plaintiff for a new trial, the same is hereby overruled, and judgment on verdict ordered: Therefore it is considered that the plaintiff take nothing by his suit, and that the defendant go thereof without day and recover against the plaintiff her costs of defense to be taxed by the clerk, and have execution thereof.

The plaintiff notes an appeal to the Court of Appeals, and the bond for costs on said appeal is fixed in the penalty of one hundred dollars.

Memorandum.

1905, May 26.—Appeal bond filed.

Memoranda.

1905, June 12.—Time to settle bill of exceptions and file transcript of record extended to August 31, 1905.

5 1905, August 30.—Time to settle bill of exceptions and file transcript of record extended to September 15, 1905.

1905, September 12.—Time to settle bill of exceptions and file transcript of record extended to October 15, 1905.

Bill of Exceptions Submitted.

Supreme Court of the District of Columbia.

TUESDAY, October 2, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * *

CONRAD BRIEL, Pl'ff, }
 vs. } No. 45435. At Law.
 ALICE C. JORDAN, Def't. }

Comes here again the plaintiff, by his attorney Mr. E. Hilton Jackson, and tenders to the court his bill of exceptions, taken dur-

ing the trial of this cause, and heretofore submitted to the court, and prays that the same may be duly signed, sealed and made part of the record, now for the time of trial, which is accordingly done. It is ordered that the time within which to file the transcript of record in this case in the Court of Appeals of the District of Columbia be, and the same hereby is extended to December 15, 1905.

Bill of Exceptions.

Filed October 13, 1905.

In the Supreme Court of the District of Columbia.

CONRAD BRIEL	}	At Law. No. 45435.
vs.		
ALICE C. JORDAN.		

Be it remembered that at the trial of the above-entitled cause, the plaintiff offered evidence tending to show that in the division of lots between the United States and the original proprietors, lots 10 and 11 in square 144, being the property in controversy in this suit, were allotted to Marcia Burns, daughter and heiress of David Burns the original proprietor, as shown by the records of squares in the office of the surveyor for the District of Columbia. The plaintiff then offered in evidence a deed dated September 26, 1826, recorded October 2, 1826, in Liber W. R. 18, folio 83 from John P. Van Ness, *et ux.* Marcia to William Bainbridge and Thomas Swann, conveying all the interest of the grantors in said square 144; said deed reciting that said Marcia was the daughter and heiress of David Burns, one of the original proprietors. The plaintiff then offered in evidence a deed dated September 25, 1826, recorded October 2, 1826 in Liber W. B. 18, folio 89, from William Bainbridge and Thomas Swann to John P. Van Ness, conveying all the interest of the grantors in square 144.

The plaintiff then offered in evidence the following deeds: (1) Deed dated September 22, 1846, recorded March 2, 1848, in Liber W. B. 141 folio 30, from Peter V. N. Van Allen to Matilda E. Van Ness, Charles W. Van Ness, Edward Van Ness and Eugene Van Ness, conveying one-third of grantor's share in estate of John P. Van Ness, said deed reciting that the grantor was one of the heirs at law of John P. Van Ness. (2) Deed dated September 22, 1846, recorded March 3, 1848, in Liber W. B. 141 folio 112, from Peter V. N. Van Allen to Cornelius P. Van Ness, conveying one-third of grantor's share in estate of John P. Van Ness, with the same recital as to heirship. (3) Deed dated October 5, 1847, recorded November 1, 1847 in Liber W. B. 138 folio 36, from Peter V. N. Van Allen to Catherine D. Phillip and William H. Phillip, conveying one-third of grantor's share in estate of John P. Van Ness;

the deed containing the same recital as to heirship. (4) Deed in trust, dated August 1, 1847, recorded August 21, 1847, in Liber W. B. 135 folio 24, from Cornelius P. Van Ness, *et ux.* Gertrude Hoffman, *et vir.* Edward Van Ness, *et ux.*, Eugene Van Ness, *et ux.*, and Matilda E. Van Ness, describing the grantors as the heirs at law of John P. Van Ness, to Richard Smith, conveying all the interest of the grantors in the estate of John P. Van Ness, in trust, among other things, to convey to Ann G. Wight certain lots, including lots 10 and 11 in square 144, the property in controversy in this suit. (5) Deed in trust, dated January 24, 1848, recorded February 15, 1848, in Liber W. B. 140 folio 6, from Catherine D. Phillip and William H. Phillip to Richard Smith, conveying all interest acquired by deed in Liber W. B. 138 folio 38 above noted to grantor upon the trust declared in deed in Liber W. B. 135 folio 24, being the deed next hereinbefore referred to, and confirms all deeds made by said Smith thereunder. (6) Deed dated December 10, 1850, recorded April 11, 1851, in Liber J. A. S. 23 folio 9, from Cornelius P. Van Ness to Richard Smith, conveying all interest
 8 acquired from Peter V. N. Van Allen, to be held by Smith upon trust specified in Liber W. B. 135 folio 24, confirming all deeds made by said Smith thereunder. (7) Deed in trust, dated October 22, 1850 and recorded November 3, 1850 in Liber J. A. S. 17, folio 10, from Edward Van Ness, *et ux.*, Eugene Van Ness, *et ux.*, Charles W. Van Ness, *et ux.*, and Matilda E. Van Ness to Richard Smith, conveying all interest acquired from Peter V. N. Van Allen, to be held upon the trusts specified in Liber W. B. 135 folio 24, confirming all deeds made by said Smith thereunder. (8) Deed dated August 20, 1847 recorded September 1, 1847, in Liber W. B. 133, folio 47, from Richard Smith, Tr. to Ann G. Wight, conveying lots 10 to 16 in square 144. (9) Deed dated January 1, 1848, recorded January 3, 1848, in Liber W. B. 140 folio 49, from Ann G. Wight, spinster, to C. H. Van Patten, conveying lots 10 to 16 in square 144. (10) Deed of trust dated January 1, 1848, recorded January 11, 1848, in Liber W. B. 140 folio 205, from C. H. Van Patten, *et ux.*, to Robert S. Chew, conveying lots 10 to 16 in square 144.

Plaintiff then offered in evidence Book B at page 105 from the surveyor's office of the District of Columbia, showing subdivision of lots 10 and 11 and others into lots 8 to 13 and others.

Plaintiff also offered in evidence the record in the case of Charles W. Pairo, *et al.*, vs. Charles Van Patten, R. S. Chew, trustee, and Ann G. Wight, *et al.*, cause 1179 in chancery rules 5, being a judgment creditors' bill for sale of original lots 10 to 16 in square 144, showing that on April 25, 1857, there was a decree for sale and appointing William Redin as trustee, and that on November 16, 1857, the trustee reported the sale of lots 10 and 11 in Van Patten's subdivision to William Nourse for Pairo and Nourse; and that
 9 on March 5, 1858, the sale was finally ratified.

The plaintiff also offered in evidence a deed in trust, dated September 14, 1857, recorded September 25, 1859 in Liber J. A. S. 142

folio 262, from Charles W. Pairo and William Nourse to Samuel C. Edes, conveying lots 10 and 11 in square 144, the property in controversy, for the benefit of the creditors of the grantors.

The plaintiff also offered in evidence assignment for the benefit of the creditors, dated January 6, 1858, recorded January 16, 1858, in Liber J. A. S. 148, folio 27, from Charles W. Pairo and William Nourse to Samuel C. Edes, conveying all the property in controversy for the benefit of the creditors of the assignors.

The plaintiff also offered in evidence a deed dated February 25, 1859, recorded April 1, 1859, in Liber J. A. S. 172, folio 32, from William Redin, Tr., to Samuel C. Edes, conveying the property in controversy to said Edes as trustee for the creditors of said Pairo and Nourse.

The plaintiff also offered in evidence deed dated April 29, 1859, recorded April 30, 1859, in Liber J. A. S. 173 folio 410, from Samuel C. Edes, Tr., to Conrad Briel, conveying said lots 10 and 11 in square 144, the property in controversy in this suit.

Thereupon the plaintiff, having proved the death of Charles Worthington, a witness examined at the former trial of this cause, produced as a witness ROBERT S. BOSWELL, who testified that he made stenographic notes of all the testimony given at the former trial of this case, including that of said witness Charles Worthington; that said notes had since been transcribed by him, which

transcript he produced and the plaintiff offered in evidence
10 the testimony of the witness WORTHINGTON as contained therein. To which evidence the defendant objected as being incompetent, but the court overruled the objection and admitted the evidence; to which ruling the defendant then and there excepted.

The plaintiff then read in evidence the testimony given by said witness Worthington at the former trial of this case, tending to show that he, the witness was a brother of Eliza Worthington Phillip, and that said Eliza Worthington Phillip was dead; that the said Eliza Worthington Phillip was connected with the Van Ness family through her marriage to said William H. Phillip; that the said William H. Phillips was recognized in the Van Ness family as a member of said family, and that he had all the family papers, family portraits, owned and occupied the family home, and was buried in the family vault.

ALBERT HARPER, a witness produced on behalf of the plaintiff, testified that he was an examiner in chancery, and was by appointment of the supreme court of the District of Columbia the examiner in the case of *The United States vs. Martin F. Morris, et al.*, in that case commonly called the Potomac Flats cases, and as such reported all the testimony taken in that case; that Mrs. Eliza Worthington Phillip was examined as a witness in that case. Said witness further testified that the report of the testimony in that case was printed in three volumes prepared by himself and carefully compared with

the original stenographic report of the testimony of the witnesses examined therein, which volumes were produced by him, and that the deposition of Eliza Worthington Phillip as given at page 691 of volume three of the report of the testimony of that case was a correct transcript of the testimony given by the said Eliza Worthington

11 Phillip in said case. Said witness Harper identified said record as corresponding in all respects with his shorthand notes.

The plaintiff then offered in evidence the deposition of the said Eliza Worthington Phillip as contained in said record. To which evidence the deposition of the said witness Eliza Worthington Phillip as contained in said record—to which evidence the defendant then and there objected on the ground that the same was incompetent, but the court overruled the objection and admitted the evidence; to which ruling the defendant excepted.

The plaintiff then read in evidence the deposition of the said witness ELIZA WORTHINGTON PHILLIP, showing that the witness testified in that case as follows: That witness was the widow of William H. Phillips; that she was acquainted with the family history of John P. Van Ness; that William H. Phillip was a great nephew of John P. Van Ness; that John P. Van Ness left no will and no children; that the following persons were his brothers and sisters: Mrs. Hoffman (Gertrude Van Ness), wife of Martin Hoffman; Cornelius P. Van Ness; William P. Van Ness, and Catherine Van Ness Van Allen; that William P. Van Ness was dead, and that Eugene Van Ness, Edward Van Ness, Matilda Van Ness and Charles W. Van Ness were the heirs of William P. Van Ness; that Catherine Van Ness Van Allen was dead, and that Peter Van Ness Van Allen was the only heir of Catherine Van Allen; that Catherine D. Phillip was the mother of William H. Phillip; that William H. Phillip was descended from Gertrude Van Ness Hoffman, who was a sister of John P. Van Ness; that one of the daughters of Gertrude Van Ness married the father of William H. Philip, the husband of the witness;

12 that Henry D. Phillip, the father of witness' husband, married a daughter of Gertrude Hoffman, who was the sister of John P. Van Ness; that such information as the witness gave was derived from conversations with her husband about her family and with his uncle George and with other members of her husband's family.

On behalf of the defendant it was conceded that the plaintiff was the Conrad Briel mentioned in the deeds last herein mentioned from Samuel C. Edes and that the defendant was in possession of the property at the time of the institution of the suit; and thereupon the plaintiff rested his case.

Thereupon the defendant moved the court to direct a verdict in her favor on the ground that the plaintiff had failed to show a record title in himself, but the court overruled the motion, and the defendant excepted.

Thereupon the defendant, to maintain the issues on her part joined, offered in evidence a deed from the corporation of Washington to M. A. W. C. Van Ness, recorded July 28, 1862 in Liber J. A. S. 222, at page 102, for the purpose of showing color of title. The defendant further offered evidence as follows:

MARIAN J. BAYARD, a witness produced on behalf of defendant, testified that she was a sister of defendant, who was a niece of Mary A. W. C. Van Ness; that the latter died in 1864, leaving no children, and that his sole heir at law was a sister Eliza Cragin; that Eliza Cragin died in 1872, leaving six children, including defendant.

DANIEL O'C. CALLAGHAN, a witness produced on behalf of defendant, identified a plat showing the lines of improvements on the property in controversy, which plat was offered in evidence, 13 and showed that such improvements consisted in an old frame shanty located in the rear portion of one of the lots in controversy, surrounded by a fence that embraced a portion of both lots.

EMMA ROAN, a witness produced on behalf of defendant, testified that Nelson Roan was her father, and lived in said shanty at his death; that he had been dead 17 years; that he lived in said property before Garfield was shot. Witness identified a book as having been found in her father's trunk. Defendant then offered said book in evidence, to which evidence the plaintiff then and there objected, on the ground that there had been no proof of the handwriting in which the entries were made, and that the same had not been otherwise identified; but upon the defendant's undertaking to make proof thereafter of the handwriting in which said entries were made, the court overruled the objection and admitted said book in evidence with the understanding that proof of said handwriting would be made; to which ruling the plaintiff then and there excepted.

The witness further testified that she had lived in said house since her father's death, and paid rent, when able, to defendant.

On cross examination the witness stated that the property was in the same condition now as when she first saw it; that there had been no improvements made, except slight repairs made by witness herself.

ELIZA JANE CHUNN, a witness on behalf of defendant, testified that she knew Nelson Roan since 1865; that he had lived in said shanty since 1876 and since his death his daughter had lived there; that there had been no change in the house since she first knew it.

14 ALICE C. JORDAN, the defendant, testified as follows: That she was a niece of Mary A. W. C. Van Ness, and a daughter of Eliza Cragin.

By Mr. SIMMONS:

Q. Now I want you to look at that book, Mrs. Jordan, especially on the inside of the first page of it, and state in whose handwriting, if you know, that receipt is? A. This is my mother's handwriting, Eliza S. Cragin.

Q. Sister of Mary A. W. C. Van Ness? A. Yes.

Q. Do you notice any other entries made in there by her? A. Yes, sir; Eliza Cragin, a signature.

By Mr. SIMMONS: I offer that book in evidence, as it has been identified.

A. (continued): I was present with her when one of those receipts was signed. (The witness subsequently testified that this occasion was in April, 1868.)

Q. You were present with her when one of the receipts were given for the rent of this property? A. Yes.

Counsel for defendant then read from said book the following entry.

“WASHINGTON, D. C., *April 2nd*, 1868.

Received of Nelson Roan \$2 for rent of lot 11 in square 144 due the 1st of month in advance.

ELIZA S. CRAGIN.”

Mr. SIMMONS: There are other receipts in there, but I won't bother about them.

15 The witness further testified that she had not seen the property in eight or nine years, that the rents were collected through an agent; that Nelson Roan had paid rent direct to her; that she had leased said property to said Roan.

Said lease, dated March 29, 1887, was read in evidence by defendant.

On cross examination, the witness testified that the shanty was on the property as early as 1864, being then occupied by Mrs. Van Ness' tenants; that Mrs. Van Ness died in 1864; that she had never seen it prior to April, 1868, and did not know who the tenants were prior to that time.

On redirect examination, the witness stated that her mother always claimed the property as her own after the death of Mary A. W. C. Van Ness; that she took possession of the property by collecting the rents.

MARIAN J. BAYARD, recalled, testified that she had known the property in controversy since the death of Mary A. W. C. Van Ness; that Nelson Roan was living there soon after, if not before, her aunt

died, and remained there until his death; that his daughter is there now; that she had seen rent paid to her mother; went with her mother to collect it; had heard her mother speak of it as her property.

ALICE C. JORDAN, recalled for further cross-examination, testified that she had paid taxes on the property on four occasions; that her aunt, her mother and sister paid taxes; that she knew this from papers coming from their papers; that her mother died in 1872; that witness had paid no taxes since that year.

Thereupon the defendant rested her case.

16 Thereupon the plaintiff, in rebuttal, offered to show that on August 4, 1888, the plaintiff brought a proceeding for the possession of lot 11 in square 144 against Nelson Roan, this being one of the lots in controversy, before Charles S. Bundy, justice of the peace in and for the District of Columbia; that personal service was had on the defendant therein on the 4th day of August, 1888; that said writ was returnable on the 13th of August, 1888; that on the 14th day of August, 1888, the plaintiff appeared and demanded judgment; that the defendant did not appear but made default; that thereupon a judgment for the possession of said lot with costs was entered; that thereafter, to wit, on the 24th day of August, 1888, a writ of restitution was issued and on the 25th day of August said writ was returned executed; to all of which evidence the defendant then and there objected on the ground that it had not been shown that any relation of landlord and tenant had previously existed between the plaintiff and said Roan, and the court sustained the said objection and excluded the evidence, to which ruling of the court the plaintiff duly excepted. The plaintiff further offered to show that on the 25th day of August, 1888, the plaintiff entered into a lease with the said Nelson Roan whereby the latter agreed to become the tenant of lot 11 at the monthly rental of two dollars, to which evidence the defendant then and there objected on the ground that it had been shown that said Roan was the tenant of the defendant and that an at-ornment by him to the plaintiff was absolutely void under section — of the Revised Statutes of the District of Columbia, and the court sustained the objection and excluded the evidence, to which ruling of the court the plaintiff then and there duly excepted.

Thereupon both plaintiff and defendant announced their case as closed.

17 Whereupon the defendant, by her counsel, moved the court to instruct the jury to return a verdict in favor of the defendant; which motion was by the court granted; to which ruling the plaintiff, by his counsel then and there excepted, and the exception was then and there noted by the justice on his minutes; and the plaintiff presents this his bill of exception to the justice who presided at the trial and prays that the same may be duly signed,

sealed and made part of the record according to the statute in such case made and provided, and the same is accordingly done, now for then, this 13th day of October, 1905.

JOB BARNARD, *Justice*. [SEAL.]

In the Supreme Court of the District of Columbia.

CONRAD BRIEL	}	At Law. No. 45435.
vs.		
ALICE C. JORDAN.		

Leo Simmons, Esq., attorney for defendant:

Please take notice that the bill of exceptions herein herewith submitted, will be presented to his honor, Mr. Justice Barnard, in circuit court No. 1, on Friday, the 13th day of October, A. D. 1905, at 10 o'clock a. m., or as soon thereafter as counsel may be conveniently heard, at which time his honor will be asked to settle said bill of exceptions.

RICHARD A. FORD,
E. HILTON JACKSON,
Attorneys for Plaintiff.

Notice of time for settling bill of exceptions hereby acknowledged and copy of the same received this 30 day of September, A. D. 1905.

LEO SIMMONS.

Memorandum.

1905, October 13.—Tile to file transcript of record in Court of Appeals extended to December 15th, 1905.

19 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 18, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 45,435 at law, wherein Conrad Briel, is plaintiff and Alice S. Jordan, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 10th day of November, A. D. 1905.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1626. Conrad Briel, appellant, vs. Alice S. Jordan. Court of Appeals, District of Columbia. Filed Nov. 13, 1905. Henry W. Hodges, clerk.